



DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

SMALL BUSINESS/SELF-EMPLOYED DIVISION

December 22, 2008

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IRM Impacted: IRM 5.12.2  
IRM 5.1.11.2.2

MEMORANDUM FOR DIRECTORS, COLLECTION AREA OPERATIONS  
DIRECTOR, ADVISORY, INSOLVENCY AND QUALITY

FROM: Frederick W. Schindler /s/ Frederick W. Schindler  
Director, Collection Policy

SUBJECT: Interim Guidance for Approval of Lien Determinations

The purpose of this memorandum is to issue interim guidance for the approval of non-filing of the Notice of Federal Tax Lien (NFTL) in the collection field function. Please ensure this information is distributed to all affected employees. These guidelines will become effective January 1, 2009.

The IRS agreed to a recommendation from the July 2008 GAO Report to Congressional Committees regarding Federal employment taxes to expeditiously file a NFTL against property as soon as possible after employment tax debt is identified, and ensure liens are filed on businesses with unpaid employment taxes.

The NFTL should be filed at the earliest possible moment under current procedures. In Collection Field function (CFf) this may not happen when the revenue officer (RO) makes a lien determination error. An analysis of the BMF lien determination accuracy rate indicated the errors that resulted in non-filing of the NFTL included liens not filed because the lien filing was improperly deferred or the lien determination date was improperly extended.

Internal Revenue Manual (IRM) section 5.12.2 provides the criteria for making lien determinations in CFf. (See Exhibit 1 for clarification of hamper collection.) The IRM is being revised to require approval for the following NFTL non-filing determinations.

- 1. Deferral of Lien filing:** Group manager approval will be required for all RO decisions to defer or not file a NFTL on all cases that have employment tax modules in which the known aggregate assessed or to be assessed balance will be greater than \$5,000. All determinations to defer or not file a NFTL must have a calendared

follow-up to revisit the lien determination should the taxpayer fail to properly resolve the delinquency. In most cases the calendared follow-up will correspond with an established deadline.

2. **Extension of the lien determination date:** Group manager approval will be required for all RO decisions to extend the normal time frame for making a determination to file a NFTL on all cases that have employment tax modules in which the known aggregate assessed or to be assessed balance will be greater than \$5,000. The extension of the Lien Determination Date is not the same as deferring the filing of the NFTL.
3. **Deferral or extension of NFTL filing in certain cases:** Territory manager approval will be required for all RO lien determinations to:
  - not file the NFTL on a case with 10 or more employment tax quarters
  - defer the NFTL on a case with 10 or more employment tax quarters
  - defer the NFTL on **any** case more than 120 days from TP contact

The group manager or territory manager will annotate approval in the ICS history until subsequent changes to automate the group manager approval process are implemented. These procedures will be incorporated in IRM 5.12.2.

**Filing Liens on subsequent employment tax balances:** A lien determination will be required on all subsequent periods at the time the RO secures the delinquent returns without full pay. The RO will ensure the subsequent period is quickly assigned to CFf by requesting CCP input the appropriate TSIGN and STAUP requests. The RO will request filing of the NFTL or document the appropriate non-filing documentation within 30 days (or the next calendared touch on the case, whichever is sooner) of assignment to the ICS inventory. These procedures will be incorporated into IRM 5.12.2.3 and IRM 5.1.11.2.2.

If you have any questions, please feel free to contact me, or a member of your staff may contact Alan Gilds, Program Analyst.

cc: [www.irs.gov](http://www.irs.gov)

## Exhibit 1

### **Hamper Collection:**

A decision may be made to either temporarily defer/delay or not file a NFTL when the RO determines the filing of the NFTL will hamper collection. The determination to defer/delay or not file the NFTL because the NFTL will hamper collection **must** be part of an agreed resolution between the RO and the taxpayer that would be in the best interest of the Government and the public.

Hamper collection means there is a reasonable certainty, supported with documentation from the taxpayer, that temporarily deferring/delaying or not filing a NFTL is in the Government's best interest and will facilitate the collection process.

Examples of situations in which a rare hamper collection determination could apply:

- Viable business that proposes a reasonable resolution with supporting documentation that factors account receivables.
- Viable business that proposes a reasonable resolution with supporting documentation that operates on a floor plan.
- Viable business that would lose its revolving account receivables upon the filing of a tax lien.
- When a taxpayer is near closing on refinancing a property to secure equity from the home in order to pay his tax liability and the filing of the lien will prohibit closing the loan.